



INTERIOR BOARD OF INDIAN APPEALS

Susan Totenhagen v. Minneapolis Area Director, Bureau of Indian Affairs

17 IBIA 216 (08/02/1989)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

SUSAN TOTENHAGEN,	:	Order Dismissing Appeal
Appellant	:	
	:	
v.	:	Docket No. IBIA 87-41-A
	:	
AREA DIRECTOR, MINNEAPOLIS AREA	:	
OFFICE, BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 3, 1989

The Board of Indian Appeals (Board) received the above case on June 23, 1987, when the matter was transferred to it by the Deputy to the Assistant Secretary - Indian Affairs (Tribal Services) in accordance with 25 CFR 2.19(a)(2) (1987). 1/ Appellant Susan Totenhagen sought review of a referendum ordinance passed by the Shakopee Mdewakanton Sioux Community (tribe), which was approved by appellee Minneapolis Area Director on October 24, 1986. In her transmittal memorandum, the Deputy to the Assistant Secretary indicated that the appeal might be moot because the ordinance expired by its own terms on March 2, 1987, and, alternatively, that a stay of administrative proceedings might be appropriate pending resolution of Prescott v. Hodel, Civil No. 4-87-106 (D. Minn. July 10, 1987), by the United States District Court for the District of Minnesota. 2/

Following initial briefing, on July 5, 1988, the Board received a motion from Leonard Prescott asking it to either dismiss the case or stay further proceedings pending consideration of Stade v. Shakopee Mdewakanton Sioux Community, J.Ct. SMSC 002-88, by the Judicial Court of the Shakopee

1/ Former section 2.19 stated in pertinent part:

"(a) Within 30 days after all time for pleadings (including extension granted) has expired, the Commissioner of Indian Affairs [or Bureau of Indian Affairs official exercising the administrative review authority of the Commissioner] shall:

"(1) Render a written decision on the appeal, or

"(2) Refer the appeal to the Board of Indian Appeals for decision."

Appeals regulations for the Bureau of Indian Affairs and the Board were amended, effective Mar. 13, 1989. See 54 FR 6478 and 6483 (Feb. 10, 1989).

2/ Prescott sought review of the Board's decision concerning appellant Totenhagen's removal as Chairman of the tribe, issued in Totenhagen v. Minneapolis Area Director, 15 IBIA 105, recon. denied, 15 IBIA 121 and 15 IBIA 123 (1987) (Docket No. IBIA 87-43-A). The district court's decision was issued on July 10, 1987. Based upon the requirements of the court's remand order, the Board dismissed IBIA 87-43-A at 16 IBIA 9 (1987).

Mdewakanton Sioux Community. Prescott stated that the validity of the referendum ordinance procedure which was the subject matter of the present appeal would be determined in the Stade case.

By order dated July 15, 1988, the Board stayed proceedings before it, noting at page 1:

The case before the Board concerns appellee's approval of the referendum procedure. When the appeal was filed with the Board, the Shakopee Mdewakanton Sioux Community * * * did not have a court or other forum for the determination of the validity of the challenged procedure. The Judicial Court of the Shakopee Mdewakanton Sioux Community was established after this case was filed and has now been functioning for several months.

As the Board has noted in other cases involving this tribe, it is not eager to impose itself into matters that are more appropriately decided by the tribe. Both it and the Bureau of Indian Affairs have, however, been forced to take a more active role in dealing with issues that should be determined by the tribe because of the absence of a tribal forum for the resolution of many of those questions. The Board notes that the creation of the Judicial Court of the Shakopee Mdewakanton Sioux Community is a significant step toward increased and improved self-government for the tribe.

Therefore, even though the Judicial Court of the Shakopee Mdewakanton Sioux Community did not exist when this appeal was filed, in the interest of encouraging and facilitating the tribe's efforts at self-government, the Board will stay further proceedings before it pending resolution of the Stade case.

The tribal court issued a memorandum opinion and order in Stade on April 13, 1989. That decision was adverse to appellant's position. The Board received a copy of the court's opinion on June 9, 1989.

By order dated June 13, 1989, appellant was given an opportunity to show cause why the present appeal should not be dismissed. The Board has not received a response to that order. On July 28, 1989, the Board received a motion to dismiss from Prescott, indicating that he had also not received a response to the Board's June 13, 1989, order.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Minneapolis Area Director's October 24, 1986, approval of the referendum ordinance is dismissed with prejudice.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge